



**DEPARTMENT OF FISH AND GAME**

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February 9, 2009

Ms. Andrea Stanley  
Lahontan Regional Water Quality Control Board  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

Subject: Revision of Conditional Waiver of Waste Discharge Requirements for Timber Harvest and Vegetation Management Activities in the Lahontan Region

Dear Ms. Stanley:

The Department of Fish and Game (Department) has reviewed the Initial Study (IS) supporting a Mitigated Negative Declaration (MND) for the above referenced project. The proposed project is the Revision of Conditional Waiver of Waste Discharge Requirements for Timber Harvest and Vegetation Management Activities (THW) in the Lahontan Region.

The Department is providing comments on the IS/MND as the State agency which has statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish and Game Code §711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish and Game Code §1802). The Department's Fish and wildlife management functions are implemented through its administration and enforcement of Fish and Game Code (Fish and Game Code §702). The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 CCR 15386(a)). The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife.

The Department offers the following comments and recommendations.

As mentioned by Department staff during the scoping process, the large geographic area and multiple purposes for projects should be acknowledged. Vegetation management in Los Angeles County during winter will be extremely different from the same in Mono or Modoc counties. Requirements to protect the environment in each of these areas can be very different. For example, winter conditions may mean snow in one area--which could reduce discharge if project implementation were to occur during that season--or rain in another, during which project implementation would increase

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discharge. Complicating matters are a multitude of factors like soil type, slope, vegetation type, and project purpose. Separate waivers with titles indicative of project purpose (e.g. Aspen Regeneration, Invasive Species Removal, Meadow Restoration) would also help to clarify the purpose and need of the "waiver" or "waste discharge requirements" for property owners and land managers when conducting timber harvest or vegetation management activities. Many landowners, including agency land managers, are not aware of these requirements for habitat restoration projects.

The stated purpose of the revised THW is to simplify the waiver for users and promote fuels reduction while ensuring protection of water quality. It appears that the proposed rules do simplify the process for projects in densely developed areas (less than 3-acre parcels). However, the Department is concerned that including mechanized equipment entry within riparian zones (projects under the proposed Category 1) may pose threats to riparian habitat and water quality because there are no notification requirements for these activities.

As a trustee agency for fish and wildlife resources, the Department is often involved with reviewing, approving, funding, and conducting various vegetation management activities on both private and public lands. A major concern of the Department under the proposed THW is the requirement to use a Registered Professional Forester (RPF) or Federal Forestry Professional (FFP) under Category 2, 4 and 6. Categorical Exemptions, such as CEQA Guidelines §15304(d), exist to reduce onerous requirements for projects that are conducted for the benefit of California, and in the Department's case, specifically for the benefit of California's natural resources on State lands. Under these circumstances, as a trustee agency over fish and wildlife resources, the Department would rely on its professional staff, rather than an RPF or FFP to make resource determinations.

Commercial projects should be regulated differently from projects that are attempting to address vegetation management for ecosystem health or to reduce the threat of catastrophic fire in riparian and wetland areas. Small construction sites and small parcels, especially those adjacent to waters of the state, have the potential to cause more damage to water quality due to the cumulative impact of multiple projects and the potential for already impaired riparian and upland habitat that will not buffer or prevent discharge as well as larger, undeveloped or low-density areas with intact vegetation.

For small projects that do not precisely fit under proposed Category 1, the Department foresees a reduction in restoration projects that would be beneficial to wildlife habitat in riparian areas. Economically restricting rules, such as requiring an RPF for riparian work, and protracted monitoring requirements may deter project proponents. The Department acknowledges that the public may not be aware of potential project impacts to water quality and wildlife habitat. However, when natural resource agency professionals work closely with landowners to improve wildlife habitat (e.g. through the Federal Partners for Wildlife Program), incorporated agency involvement should be more than adequate to determine which trees should be removed during a project. The Department recommends that projects on private lands that are conducted for habitat

restoration and in close collaboration with a natural resource agency (i.e. an agency with the purpose of managing and improving conditions for wildlife), be included in Category 1.

The Department reviews, approves, funds, and conducts many invasive species removal projects that focus on deleterious plants in the riparian corridor. These projects are often conducted by non-profits or local agencies and are funded by small grants. Example projects include: conifer removal from aspen groves; tamarisk, locust, and Russian olive removal from riparian corridors; juniper and pinyon pine removal from sage meadows; and other habitat restoration/invasive species control type projects. The requirement that an RPF be involved for any riparian work involving removal of trees greater than 3 inches dbh neither ensures habitat protection nor promotes future habitat restoration work in light of the current economic climate in California (e.g. reduced grant monies available for these types of projects). Conditions 2, 3, and 4 under Category 6 that require an RPF or FFP to identify various criteria can be done by other natural resource professionals. Although tamarisk removal utilizes hand crews, the cut and paint method of applying herbicide will push these projects into Category 6, which will require an RPF or FFP to mark any tamarisk, Russian olive, Tree of Heaven or other invasive species over 3 inches dbh. Under the 2007 waiver, there is a requirement that scientists with stated minimum qualifications be involved where sensitive habitat is being treated (in addition to the RPF or FFP which is a requirement specific to the Lake Tahoe). In the proposed THW, this requirement has been omitted and is now only under the purview of an RPF or FFP. The Department recommends that an appropriately-qualified natural resource professional be added as an option to the current RPF or FFP requirement and hopes that Board staff can work with the Department to encourage and facilitate non-profits to continue invasive species removal.

#### **Waiver specific comments**

Attachment C. The application for Category 4 erroneously states that there are 11 rather than 10 criteria.

Page 6, 14(c). States that the waiver will balance the need for fuel hazard reduction with protection of water quality by expediting permitting for lower impact fuels hazard reduction and forest enhancement projects. The Department does not agree that the RPF/FRF requirement for riparian work is the only (or best) way to accomplish this--there are many other natural resource professionals trained in land and wildlife management that are qualified to determine how to achieve desired project outcomes while minimizing impacts to natural resources. Conditions for Category 1, unless public education is included as a component of this waiver process, are of concern to the Department and should be reevaluated.

The Department commends and appreciates the goal of waiver General Provision 2 that allows for the division of projects into more than one category.

The Table 1 summary is not complete with regard to categorical caveats, so direction should be made to reference the text for further information regarding Category criteria. For example, Category 1 defensible space/fire prevention could indicate to a project proponent that their project would not require notification. Within the body of the document, however, Category 1 is further defined to be limited to parcels of 3 acres or less. The Department understands that the table is a summary, but makes this recommendation to prevent the reader from coming to an erroneous conclusion about the category requirements.

Unfortunately, many species of herbaceous and woody plants have invaded the riparian corridors of California. Invasive species removal may require the take of trees larger than 3 inches dbh. In addition, proper application of cut and paint herbicide, in a localized, targeted application, is often the most effective method to remove many invasive plant species, and it seems much more controlled than dry application of borax salts that can blow or wash into waterways during or after application. Revised Category 4 prohibits herbicide use, except dry application or borax or sporax. The Department hopes that the Board will consider adding 'cut and paint applications' of herbicides designed to be used near water into Category 4.

The Department questions the rationale that places 'construction activities' in Category 1, regardless of proximity to waters of the state. The Department recommends that Category 1 projects should have the same protective measures regarding work in the riparian as Category 2, and suggests that project size rather than parcel size is the deciding factor of whether a project should require more or less monitoring reports and restrictions. One suggestion would be to combine Categories 1 and 2, with the new category having water zone restrictions that are now in Category 2. In addition, the Department questions the rationale that allows mechanical access off existing roads in Category 1, but not Category 2, and, in fact, in any other category, off road mechanical equipment (tractors, masticators, etc.) use invokes higher monitoring requirements. While the Department comprehends that damage can occur with repeated off road use, a one-time project where off-road use is not expected to create ongoing erosion issues or create new roads should be used as criteria that allow projects to fall under Category 1. That is, if off-road access is required, but the project proponent does not perceive habitat damage due to limited access events and work on low-gradient, non-saturated soils, the project should fall into Category 1.

The IS/MND and draft waiver (Page 3 and 5, respectively) both define a myriad of projects that fall under 'timber harvest and vegetation management activities,' none of which includes commercial harvest. It is perplexing, therefore, that an RPF or FFP is required to mark trees for projects such as aspen regeneration, meadow rejuvenation, fuels reduction, and invasive species removal. It seems that the Board is using excerpts from the Forest Practice Rules that focus on revenue-generating projects with goals quite different from those that would be implemented to improve wildlife habitat. In addition, as commercial harvest is not listed in the definition of projects covered by this waiver, as mentioned previously during scoping, it is suggested that the current

nomenclature for the waiver be changed to delete or relegate to a subtitle the phrase "timber harvest." Agencies, non-profits, and individuals conducting restoration will be more likely to comprehend that a waiver is necessary and implement Board requirements under a "vegetation management waiver."

#### **IS/MND specific comments**

It is within the authority of the Board to regulate land uses in a watershed that may infuse pollutants into waters of the state. Requiring RPFs or FFPs to implement Board standards seems beyond that realm of authority. Many other classifications of natural resource professionals are perfectly capable of assessing watershed conditions and implementing projects that meet Board standards. Whether the project is on private, State, or federal lands, there are numerous classifications natural resource professionals qualified to make the requested determinations, an RPF not necessarily being the most desired classification for designing a restoration project for aquatic species, for example. Thus, additional personnel would be required, and in many cases, the RPF or FFP would not already be on staff, thus would need to be contracted. The Department is concerned that this specific requirement will either encourage more revenue-generating timber harvest projects to pay the salary of the RPF or discourage fuel reduction and habitat restoration projects due to the extra costs incurred by this requirement.

The Department questions the inconsistency of requiring RPFs or FFPs to mark trees, while placing the possibly more important component of monitoring water quality on project proponents with no required qualifications. This implies that a skidder operator or high school level summer intern has the expertise to determine impacts to aquatic invertebrates, for example, but a biologist or agency land manager does not have the capability to determine which trees should be removed to improve habitat or remove an invasive species. The Department suggests providing guidelines of what may cause an impact to water quality for private individuals conducting projects--especially with regard to Category 1 projects.

Page 7: The categories are organized based on threats to water quality, but the Department perceives that small parcel owners may have larger impacts to water quality due to potential higher density of impacts than projects on large public or private lands.

Page 17: The IS/MND assumes that the waiver is in compliance with the Basin Plan, and that projects will be designed and implemented to "ensure biological resources are protected, and any impacts will be reduced to less than significant levels." But the only professional required is an RPF. Thus, "protection or enhancement of fish passage and protection of riparian vegetation"...is dependent upon an RPF while a Fishery Professional has no authority within the confines of this waiver to conduct a project that may require removal of trees without obtaining the assistance of an RPF.

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Page 18: Simply because an area is urban or industrial does not mean that impacts to water quality are low. Category 1 is described as very low or no threat to water quality, yet includes construction clearing and urban defensible space. The Department would rather see criteria such as low slope, stable soils, vegetation type and density, distance to water, as criteria--as they are in some of the other categories. As previously stated, restoration projects should have a separate waiver with different criteria/requirements from commercial timber harvest, the method and monitoring may be the same, but the goal of restoration projects is to improve habitat quality and stability of sites--including water quality (a goal much different from commercial timber harvest).

Page 26 states that the categorical treatment of timber harvest activities is designed to ensure that impacts from soil erosion will be less than significant. These categories and projects vary from those conducted around existing structures, which fall under Category 1 with low or no threat to water quality, to timber harvest activities on sensitive land which fall under Category 6. Category 1 allows activities up to the water's edge, regardless of the type of water, which does not seem to imply 'very low or no threat' to water quality, while the same activities within 75 feet of a fish-bearing water on a larger parcel, fall within Category 6. The Department also questions the zoning requirements. Why are agricultural and resource management zones not included in Category 1? Why does a parcel size of 'less than 3 acres' reduce the potential impacts to water quality rather than the project size and project components?

Page 37: Is an RPF required for all categories except Category 1 if trees greater than 3 inches dbh are being removed?

Page 37: It would be beneficial to cite the studies that demarcate the difference in impact between 10 pounds per square inch and 13, since 10 can be utilized in Category 2, but if it's 13 pounds per square inch, the project moves into a more restrictive category.

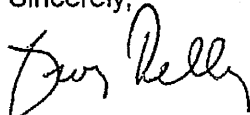
The Department's current understanding of this waiver is that it assumes that all habitat restoration projects to reduce fuel, remove invasive species, etc. will result in waste discharge almost with no regard to proximity to water, project design, soil type, and slope. The Department agrees that water quality standards should be upheld, and that notification should occur for work where a discharge is expected. However, for vegetation management projects where no discharge is anticipated, the Department questions the notification, monitoring reports, and RPF requirements being put forth in this waiver.

The Department appreciates and supports the attempt to streamline the process of notification for waivers of discharge and to reduce potential threats to water quality and hopes that our recommendations will assist in accomplishing this goal.

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If you have any questions or comments, please contact Ms. Dawne Becker via email at [dbecker@dfg.ca.gov](mailto:dbecker@dfg.ca.gov) or at the letterhead telephone number or address.

Sincerely,



Troy Kelly FOR:

Brad Henderson  
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cc: Dawne Becker  
Troy Kelly